COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FORMER SECOND SECTION

CASE OF GEBREMEDHIN [GABERAMADHIEN] v. FRANCE

(Application no. 25389/05)

JUDGMENT

STRASBOURG

26 April 2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gebremedhin [Gaberamadhien] v. France,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr A.B. Baka, *President,*
Mr J.-P. Costa
Mr I. Cabral barreto,
Mrs A. Mularoni,
Mrs E. Fura-Sandström,
Mrs D. Jočienė,
Mr D. Popović, *judges*,
and Mrs S. Dollé, *Section Registrar*,

Having deliberated in private on 16 January 2007 and 27 March 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 25389/05) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Eritrean national, Mr Asebeha Gebremedhin [Gaberamadhien] ("the applicant"), on 14 July 2005. The applicant stated that the spelling "Gaberamadhien", which appeared in some internal documents, corresponded to the phonetic transcription of his name by the French airport and border police. The Eritrean statements and documents written in the Roman alphabet, meanwhile, retained the spelling "Gebremedhin". The applicant added that, like very many Eritrean journalists, he used a "professional pseudonym", namely "Yayneabeba" ("flower of my eye").

2. The applicant, who had been granted legal aid, was represented by Mr Jean-Eric Malabre, a lawyer practising in Limoges. The French Government ("the Government") were represented by their Agent, Ms Edwige Belliard, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. The President of the Chamber to which the case was originally assigned, and subsequently the Chamber, decided to apply Rule 39 of the Rules of Court, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings before the Court not to remove the applicant to Eritrea.

4. By a decision of 10 October 2006, the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1 of the Rules of Court). In addition, third-party comments were received from the National Association for Assisting Aliens at Borders, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2). The parties replied to those comments (Rule 44 § 5).

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 16 January 2007 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Ms E. Belliard, Director of Legal Affairs, Ministry of Foreign Affairs, *Agent*,

Ms A.-F. Tissier, Head of Human Rights Section, Legal Affairs Department, Ministry of Foreign Affairs,

Ms M. Ziss, Drafting Secretary, Human Rights Section, Legal Affairs Department, Ministry of Foreign Affairs,

Mr Mouton, Deputy Head, Legal and International Affairs Division, OFPRA,

Ms F. Doublet, Head of the European, International and Constitutional Law Bureau, Legal Advice and Litigation Section, Department of Civil Liberties and Legal Affairs, Ministry of the Interior,

Mr J.-M. Ribes, Central Office of the Airport and Border Police, Ministry of the Interior,

Mr M. Caussard, Litigation Section, *Conseil d'Etat*, *Counsel*,

(b) *for the applicant*

Mr J.-E. Malabre, lawyer, *Counsel*.

The applicant was also present.

The Court heard addresses by Mr Malabre and Ms Belliard and their replies to judges' questions.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1979. He is currently in accommodation in Paris provided by a non-governmental organisation.

8. In 1998, like many other persons, the applicant and his family were displaced from Ethiopia to Eritrea. In Eritrea, the applicant worked as a press photographer, chiefly for the independent newspaper *Keste Debena*, whose editor-in-chief at the time was Mr Milkias Mihretab. The applicant stated that the latter was well known as a champion of the free press in Eritrea and that his case had been dealt with in Amnesty International's 2002 report, which referred in particular to the fact that he had been arrested and arbitrarily detained in that country on more than one occasion on account of his work as a journalist. The applicant added that on 27 June 2002 the British Section of Amnesty International had awarded Mr Mihretab its "Special Award for Human Rights Journalism under Threat".

The applicant and Mr Mihretab were arrested in 2000, apparently on account of their professional activities. They were held in Zara Prison for eight months and six months respectively.

In that connection the applicant stated that he had been referred to – under the name of "Yebio", a diminutive form of his pseudonym "Yayneabeba" – on an Internet site dedicated to reform in Eritrea (www.awate.com), as one of the six journalists arrested on 14 October 2000 at the same time as Milkias Mihretab.

9. Unlike Mr Mihretab, who fled to Sudan in September 2001, the applicant remained in Eritrea, in Asmara, in order to take care of his widowed mother and his four brothers and sisters. Some time after Mr Mihretab's departure – on an unspecified date – the police questioned the applicant about him. Police officers searched his home and found photographs which they considered to be compromising. The applicant was arrested and was subjected to ill-treatment, signs of which allegedly persist in the form of cigarette burns and injuries to his back caused by the position in which he was held for about twenty days, lying face down with his feet and hands tied above his back. He was subsequently imprisoned for six months before falling ill and being transferred to hospital, from where he escaped by paying the guards, with the help of relatives of his maternal grandmother who worked there. He then hid in his grandmother's home in Areza, where he was treated by a doctor. As soon as he had recovered he fled to Sudan where one of his uncles lived. When an Eritrean was shot dead in Sudan he decided to leave the country, as the Eritrean community

there believed the killing had been carried out by Eritrean government agents in pursuit of opponents of the government.

10. The applicant stated that he had travelled to South Africa and, with the help of a smuggler and using a Sudanese passport (in the name of "Mohammed Eider" or similar), which had been kept by the smuggler, had arrived in Paris Charles de Gaulle Airport in Roissy at around 5.30 a.m. on 29 June 2005 on a flight from Johannesburg. He submitted that he had been held in the airport's international zone until 1 July 2005 and had thus been unable to apply for leave to enter the country. Eight hours after his arrival he reported to the police station, saying that he was Eritrean and wished to apply for asylum. The police officer asked him to "prove where [he] had come from, claiming that [he] was not Eritrean but Pakistani, and for the first time refused [him] permission to leave the international zone". According to the applicant, over a period of two days (between 29 June and 1 July), he went regularly to the police station – at each change of shift, or approximately eight times – in the vain hope of finding a police officer who would deal with his application. He said that "it was not until 1 July that a new police officer whom [he] had not seen previously finally registered [his] application".

The Government contested this version of the facts. They said that they had checked the passenger lists for flights from South Africa which landed at Roissy airport on 29 and 30 June and 1 July 2005 and that there had been no mention of anyone by the name of Gebremedhin, Gaberamadhien or Eider. They referred to the report by Roissy airport and border police dated 1 July 2005, which stated that the applicant had been questioned at 11 a.m. that day.

11. On 1 July 2005 the applicant applied for leave to enter France as an asylum seeker. He was questioned at 11 a.m. by a senior police officer (*officier de police judiciaire*) assisted by an English-speaking interpreter. The record of the interview simply states that "the interviewee did not provide any evidence in support of his statements". The decision to hold the applicant in the waiting zone was taken by the administrative authority on that date and time, for an initial period of forty-eight hours, which was subsequently extended (see paragraph 18 below).

12. The applicant said that he had been interviewed for the first time on 3 July 2005 by an official from the French Agency for the Protection of Refugees and Stateless Persons (OFPRA), who had recommended that the applicant be granted leave to enter the country as an asylum seeker. The Government, for their part, contended that no recommendation had been issued on 3 July. The record of the interview and the proposed recommendation, both drafted by the official concerned, had been considered unsatisfactory by the official's immediate superior, who was responsible for approving them. For that reason the applicant had been interviewed a second time, on 5 July 2005, by the latter official (assisted by

an interpreter). The official concerned issued the following recommendation that the applicant be refused leave to enter:

“**Statement taken in Amharic through an ISM interpreter**

Reason for the application? My parents are of Eritrean origin. We had Ethiopian nationality and lived in Addis Ababa. In 1998 the Ethiopian authorities told us we were not Ethiopians. We were expelled from Ethiopia to Eritrea. I was supposed to sit my school-leaving exams that year, but was unable to sit them in Eritrea. I worked in a garage for six months, then did my national service. While I was there I met a guy who was a journalist. When I'd finished my service I worked with this journalist friend as a cameraman and photographer, and we travelled together on reporting assignments. My friend was having hassles with the authorities and wanted to leave the country. As soon as I got back the authorities questioned me about my friend and put me in prison. While I was in prison the police searched my house and found two photos which they considered compromising. Then they started torturing me with cigarettes. I stayed in prison for six months until I fell ill with tuberculosis. They took me to hospital. By chance, it was the hospital where some of my grandmother's relatives worked. They bribed the guards, brought me clothes and helped me to escape. I went to my grandmother's place in Areza and stayed there for four months while I was being treated. Then I left the country secretly for Sudan. I found work straight away in a garage in Khartoum, but there were Eritrean agents around, and an Eritrean who worked not far away was killed. I was afraid and went to Port Sudan, where I worked as a porter on the quays. I stayed in Sudan for about two years in all (eight months in Khartoum, a year in Port Sudan and another two months in Khartoum). My uncle sold his car to pay for my trip. I travelled to South Africa before coming to France. My uncle found the network of people smugglers. I don't know how they organised things.

What is your friend called and how did you meet him? His name is Milkias Mihretab, he's a friend of the family, he knew my parents in Addis Ababa. When we moved back to Asmara, I spent 18 months doing my national service. After that I was in the reserves and worked in an army garage but didn't wear a uniform. That was when my friend arranged for me to go and work for him, by acting as a guarantor for me.

Can you give some examples of events you covered? We covered the student strikes in Asmara in 2002 (no further details given).

What were the two “compromising” photos found at your home? I don't know, I can't remember.

What newspaper did your friend Milkias Mihretab work for? *Keste Debena* (Rainbow). **What was his job?** Editor-in-chief.

Do you know what kind of problems your friend had with the authorities? There were two main reasons. First, my friend was in favour of a Constitution and, second, thirteen ministers were imprisoned and my friend had published their biographies. They were put in prison just after the students' strike in 2002.

When did your friend leave the country? It was in April 2002, when all the journalists were arrested.

Have other journalists been arrested? All the Eritrean journalists are in prison. **Do you know other journalists from *Keste Debena* who were arrested?** (No reply). **Other photographers?** (No reply).

Can you give more details about your arrest (date, circumstances, place of detention)? I was arrested in October or November 2002. They took me to Maytamanay Prison, where I spent six months.

Were you not arrested "as soon as you got back" to Asmara? No, I continued working here and there for six months.

What has become of your family? My father became ill and died before the family was expelled. My mother and my two brothers and two sisters live in Asmara. My brothers and sisters are studying.

What are you afraid of if you go back? When I was arrested, the main thing they wanted to know was what network my friend had used to leave the country. I think they're still trying to get that information.

Is this your real name? Yes, I don't have any other name, I never have had.

Have you anything to add? No.

Reasoned recommendation

Mr Asebeha Gaberamadhien, an Eritrean national, has stated that he worked as a photographer with a family friend who is a journalist. According to Mr Gaberamadhien, in April 2002, while they were on a reporting assignment on the Sudanese border, the journalist took the opportunity to leave Eritrea. On his return to Asmara, Mr Gaberamadhien continued to work for six months before being arrested by the Eritrean authorities. He was placed in detention for six months and was regularly questioned about the circumstances surrounding the departure of his friend and colleague. After contracting a serious illness he was transferred to hospital, from where he managed to escape with the help of family members working there. He then stayed with his grandmother for four months before leaving Eritrea for Sudan, where he lived and worked for about two years.

However, Mr Gaberamadhien's account contains a large number of inaccuracies and erroneous references which cast doubt on the truth of his statements. While the episode in which several journalists were arrested in Asmara is very well-known and received widespread media coverage, Mr Gaberamadhien's account bears no relation to what actually happened. The Eritrean journalists were arrested in September 2001, not in April 2002, and the applicant displays no knowledge of the reasons leading to the closing-down of the newspapers and the arrest of the journalists. The editor-in-chief of the newspaper *Keste Debena* also left Eritrea in September 2001 (it therefore seems impossible that he could have covered the student strikes in 2002). The circumstances of his departure, accompanied by another reporter from the same newspaper, do not tally either with Mr Gaberamadhien's statements. It seems surprising to say the least that, apart from the editor-in-chief of *Keste Debena*, he is unable to name any other journalist or photographer arrested by the Eritrean Government of the day, or to name any other newspaper that was banned. Likewise, it is extremely surprising that Mr Gaberamadhien is only able to cite – in a very sketchy

and imprecise way – one event which he covered as a photographer. His lack of knowledge is such that it raises serious doubts as to whether he was actually engaged in this activity. Given the widespread media coverage of the events at the time, it seems strange that Mr Gaberamadhien's name does not appear anywhere, either as a member of staff of *Keste Debena* or as one of the persons arrested. All these factors taken together suggest that Mr Gaberamadhien is attempting to falsify his past.

The French Agency for the Protection of Refugees and Stateless Persons takes the view that the application for leave to enter France as an asylum seeker made by Mr Asebaha Gaberamadhien should be considered as manifestly unfounded, and therefore issues a

RECOMMENDATION TO REFUSE LEAVE TO ENTER"

13. On 6 July 2005 the Ministry of the Interior held that the applicant's application for leave to enter French territory as an asylum seeker was "manifestly unfounded". It therefore rejected the application and decided to remove him "to Eritrea, or if need be to any country where he may gain lawful entry" (the applicant claimed that 93% of the applications made at the airport were rejected in this way). The decision read as follows:

"...

Having regard to the Geneva Convention of 28 July 1951 relating to the Status of Refugees;

Having regard to the Immigration and Asylum Code, and in particular Articles L.221-1 and L.213-4 thereof;

Having regard to Decree no. 82-442 of 27 May 1982 as amended implementing section 5 of the Ordinance of 2 November 1945, as amended in respect of leave to enter French territory, and in particular Article 12 thereof;

Having regard to the application for leave to enter France as an asylum seeker made at Roissy airport on 1 July 2005 by X, purporting to be Mr Asebaha or Asebeha Gaberamadhien, born on 15 March 1979 and of Eritrean nationality;

Having regard to the report drawn up by the border police on 1 July 2005;

Having consulted the French Agency for the Protection of Refugees and Stateless Persons on 5 July 2005;

X, who purports to be Mr Asebaha or Asebeha Gaberamadhien, an Eritrean national, has stated that during his national service he met a journalist, editor-in-chief of the newspaper *Keste Debena* (Rainbow), for whom he worked as a cameraman and photographer after completing his service. The latter had problems with the authorities because of his support for a Constitution and because he had published biographies of thirteen ministers imprisoned after the student strikes in 2002. His journalist friend left the country in April 2002 after they had carried out a reporting assignment on the Sudanese border. He himself returned to Asmara and continued working. After six months, in October or November 2002, the authorities questioned him on the circumstances in which his friend and colleague had left the country. The police found

two compromising photographs at his home and he was later subjected to ill-treatment. He was imprisoned for six months and, after falling ill, was transferred to the hospital where relatives of his grandmother worked. He escaped from the hospital by bribing the guards and went to Areza, staying there for four months before travelling to Sudan, where he lived and worked for two years;

However, X's statements contain numerous inconsistencies which detract from their credibility. His account does not tally with the actual events to which he refers, namely the arrest of several journalists in Asmara, which was very well-known and received widespread media coverage. The Eritrean journalists were arrested in September 2001, not in April 2002, and X displays no knowledge of the reasons leading to the closing-down of the newspapers and the arrest of the journalists. Moreover, the editor-in-chief of the newspaper *Keste Debena* left Eritrea in September 2001 and could not therefore have covered the student strikes in 2002 as X claims. The circumstances of the editor's departure, together with another reporter from the same newspaper, do not tally either with X's statements. In addition, there is no proof of his professional activity: it is very surprising that he is unable to name any other newspaper that was banned or any other journalist or photographer arrested by the Eritrean Government of the day. It is also astonishing that X is able to cite only one event which he covered as a photographer, and in a very sketchy and imprecise way. Finally, his name does not appear anywhere, either as a member of staff of *Keste Debena* or as one of the persons arrested, despite the widespread media coverage of the events at the time. All these factors taken together cast doubt on the sincerity of his application and whether it is well founded;

Consequently, the application for leave to enter France for the purposes of asylum made by X ..., purporting to be Mr Asebaha or Asebeha Gaberamadhien, is to be considered manifestly unfounded;

Under Article L.213-4 of the Immigration and Asylum Code, directions are to be given for his removal to Eritrea, or if need be to any country where he may gain lawful entry. ...”

14. On 7 July 2005 the applicant made an urgent application to the Cergy-Pontoise Administrative Court under Article L.521-2 of the Administrative Courts Code, seeking an order requiring the Minister of the Interior to grant him leave to enter France in order to lodge an application for asylum. He argued that the refusal to grant him leave to enter amounted to a serious and manifestly unlawful breach of the right of asylum – a fundamental freedom whose corollary was the right to apply for refugee status, entailing the right to temporary residence in the country – and of the right to life and the right not to be subjected to inhuman or degrading treatment within the meaning of Article 3 of the Convention. In that regard the applicant maintained, in particular, that the Ministry had not only exceeded the scope of its powers in examining the substance of his asylum application, but had also committed an error of assessment in finding the application manifestly unfounded. He stressed in particular that, as a cameraman and photographer working for a journalist, he had been subjected to persecution in his country of origin, where he had been

imprisoned twice and subjected to ill-treatment, before seeking refuge in Sudan, from where he had fled as his life had been in danger.

The applicant submitted to the urgent-applications judge the following statement, drawn up the same day by the non-governmental organisation Reporters without Borders (*Reporters sans frontières*):

> “... Reporters without Borders, an international organisation dedicated to defending freedom of the press, wishes to draw your attention to the case of Asebaha Gaberamadhien, a journalist and Eritrean national.
>
> Thanks to the efforts of our permanent correspondents, we are in a position to confirm that Mr Gaberamadhien worked as a press photographer. We have contacted the Eritrean journalist Yohannes Milkias Mihretab, now in exile in the United States, who confirmed that he worked with Mr Gaberamadhien. He also confirmed that the two men were held at the same time in Zara Prison, one of the harshest prisons in the country, in very difficult conditions.
>
> While mindful of the deadlines which must be met in examining this case and carrying out the necessary checks, I would nevertheless stress that Reporters without Borders supports Mr Gaberamadhien's application for political asylum. We would welcome the opportunity to meet with him in order to study the case more closely and furnish all the evidence required for the purposes of his application. We would be greatly obliged if you would grant him leave to enter France ...”

In addition, the applicant produced two emails in English sent by Mr Mihretab to Reporters without Borders on 7 July 2005 (Mr Mihretab sent a third, similar, email to applicant's counsel on 11 July 2005). In the two emails, Mr Mihretab confirmed that he had known Asebeha Gebremedhin for a long time. Having been shown a photograph of the applicant, he stated that it was indeed Mr Gebremedhin, a journalist and dissident activist who had worked as a freelance photographer for the newspaper *Keste Debena*, and that they had been detained together for several months in Zara Prison. Mr Mihretab added that the applicant had suffered a great deal and had undergone numerous ordeals on account of his involvement in campaigning for democratic change and of his work with the independent press. In view of the current situation in Eritrea and the fact that the applicant, who had been held in Zara Prison, was known to the authorities, he would undoubtedly be arrested in that country. His life would be in danger and he would run the risk at the very least of being tortured and of “disappearing” like very many journalists, dissidents and other activists.

15. On 8 July 2005 the urgent-applications judge of the Cergy-Pontoise Administrative Court issued an order rejecting the applicant's application, without holding a hearing. The order read as follows:

> “...
>
> Article L.521-2 of the Administrative Courts Code states as follows: 'Where such an application is submitted to him or her as an urgent matter, the urgent-applications judge may order whatever measures are necessary to protect a fundamental freedom

which has been breached in a serious and manifestly unlawful manner by a public-law entity or an organisation under private law responsible for managing a public service, in the exercise of their powers. The urgent-applications judge shall rule within forty-eight hours.' Article L.522-1 of the same Code provides: 'The urgent-applications judge shall give a ruling following written or oral adversarial proceedings. Where the judge is requested to order the measures referred to in Articles L.521-1 and L.521-2, to amend them or bring them to an end, he or she shall inform the parties without delay of the date and time of the public hearing ...'. Lastly, Article L.522-3 of the Code provides: 'Where the application is not urgent or where it is clear from examination of the application that it does not fall within the jurisdiction of the administrative courts, is inadmissible or is unfounded, the urgent-applications judge may reject it in a reasoned order, without applying the first two paragraphs of Article L.522-1'.

Article L.221-1 of the Immigration and Asylum Code, meanwhile, states as follows: 'An alien who arrives in France by ... air and who (a) is refused leave to enter French territory or (b) applies for asylum may be held in a waiting zone situated in ... an airport, for the time strictly necessary to arrange his departure and, if he is an asylum seeker, to investigate whether his application is manifestly unfounded...'. Article 12 of the Decree of 27 May 1982 as amended states: 'Where an alien arriving at the border applies for asylum, a decision to refuse him or her leave to enter France may be taken only by the Minister of the Interior, after consultation of the French Agency for the Protection of Refugees and Stateless Persons'.

The documents in the file show that Mr Asebeha Gaberamadhien, an Eritrean national, arrived in France by air and on 1 July 2005 requested leave to enter the country as an asylum seeker. In accordance with the provisions of Article L.221-1 of the Immigration and Asylum Code, cited above, Mr Gaberamadhien was held in the waiting zone while his application for asylum was examined. After consulting the French Agency for the Protection of Refugees and Stateless Persons on 5 July 2005, the Minister of the Interior and Regional Development, in the impugned decision of 6 July 2005, refused Mr Asebeha Gaberamadhien leave to enter France on the ground that his asylum application was manifestly unfounded.

It is true that the right of asylum and its corollary, the right to request refugee status and, accordingly, to remain in France for the time necessary for the asylum application to be examined, constitute a fundamental freedom for aliens and that, in urgent cases, the urgent-applications judge may order whatever measures are necessary to protect that freedom on the basis of the above-mentioned provisions of Article L.512-2 of the Administrative Courts Code, where the administrative authorities, in the exercise of their powers, have breached it in a serious and manifestly unlawful manner. However, such a breach cannot result solely from the fact that, in accordance with Article L.221-1 of the Immigration and Asylum Code, the Minister of the Interior personally took a decision on the asylum application, in this case in the form of the decision of 6 July 2005, since under Article L.711-1 of the same Code the French Agency for the Protection of Refugees and Stateless Persons can consider only applications for refugee status made by aliens who have been granted leave to enter the country. Moreover, there is nothing in the case file to suggest that the refusal to grant Mr Asebeha Gaberamadhien leave to enter the country – on account of the manifestly unfounded nature of his asylum application – was manifestly unlawful. In particular, the applicant did not provide sufficient and substantiated details as to his identity, his alleged professional activity as a cameraman and photographer in his country of origin, the persecution he alleged and

> the reasons for it, or the risks he would actually run were he to return to his country of origin or to Sudan, where he was last resident, or any prima facie evidence capable of substantiating those risks or altering the Interior Minister's assessment of the asylum application. The only documents produced by Mr Gaberamadhien, namely the testimony from a journalist who is a refugee in the United States, which contains very little detail, and a letter from Reporters without Borders, are insufficient to establish that he was at personal risk if he returned to his own country or to Sudan.
>
> It follows from all the above considerations that the decision of 6 July 2005 of the Minister of the Interior and Regional Development refusing Mr Asebeha Gaberamadhien leave to enter France as an asylum seeker cannot be said to have breached his right to request refugee status in a serious and manifestly unlawful manner such as to justify ordering measures under Article L.521-2 of the Administrative Courts Code. Consequently, and in accordance with the above-mentioned provisions of Article L.522-3 of the Administrative Courts Code, the applicant's application must be rejected as manifestly unfounded...”

16. On 7 July 2005 the applicant was accompanied to the Eritrean embassy by police officers. The applicant claimed that the authorities had presented his account of events surrounding his asylum application – giving details of the circumstances in which he had fled and the names of the persons who had helped him – to the Eritrean ambassador. The ambassador had launched a violent verbal attack on him in her own language and refused to recognise him as a national of Eritrea and issue him with a laissez-passer.

The Government denied that the applicant's account of events had been presented to the ambassador or that she had expressed a definite opinion on that occasion as to whether the applicant should be issued with a laissez-passer (she had not informed the French authorities of her position on the matter until 15 July 2005).

17. In a decision of 20 July 2005, “in view [among other considerations] of the request made by the European Court of Human Rights under Rule 39 of its Rules of Court to suspend the applicant's removal until 30 August 2005”, the Ministry of the Interior granted the applicant leave to enter France. At the same time the applicant was issued with a safe conduct valid for eight days – which referred also to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court – to enable him to report to the prefecture and apply for a temporary residence permit as an asylum seeker. With the help of the National Association for Assisting Aliens at Borders (ANAFE – a non-governmental organisation made up of twenty associations and trade unions) and Reporters without Borders, he obtained a one-month residence permit from Paris prefecture on 26 July 2005, with a view to his lodging an asylum application with OFPRA (which he duly did).

18. As stated above, the decision to hold the applicant in the waiting zone for forty-eight hours was taken by the administrative authority on

1 July 2005 at 11 a.m. (see paragraph 11 above). The measure was extended for a further forty-eight hours on 3 July.

On 5 July 2005 the liberties and detention judge (*juge des libertés et de la détention*) of the Bobigny *tribunal de grande instance* – before whom the applicant had appeared, assisted by a lawyer and an interpreter – authorised the holding of the applicant for a further eight days, in an order giving the following reasons:

> "Mr Gaberamadhien's application for political asylum is under consideration. He should continue to be held in the waiting zone."

On 13 July 2005 the same judge – before whom the applicant had again appeared, assisted as before – authorised the holding of the applicant in the waiting zone for another eight days, in an order giving the following reasons:

> "The asylum application was rejected on 6 July 2005. Mr Gaberamadhien does not have a passport. He was taken to the Eritrean embassy on 7 July 2005 and the authorities are waiting for him to be issued with a laissez-passer. He should continue to be held in the waiting zone."

19. In a decision of 11 August 2005, following an appeal lodged by the applicant on 18 July 2005 against the order of 8 July 2005, the *Conseil d'Etat* held in the following terms that it was unnecessary to give a ruling:

> "...
>
> ... Mr Asebeha Gaberamadhien ... lodged an application with the European Court of Human Rights which, in a decision of 15 July 2005, indicated to the French Government under Rule 39 of its Rules of Court that it was 'desirable, in the interests of the parties and of the proper conduct of the proceedings before it, not to remove the applicant to Eritrea before midnight on 30 August 2005'. In response to that request the Minister, in a decision of 20 July 2005 taken after this appeal had been lodged, granted Mr Gaberamadhien leave to enter France, thus enabling him to make an application for asylum. The appellant duly did so, having been issued on 26 July 2005 with a temporary residence permit. The measure thus enacted has the same effect as the measure requested in the application to the urgent-applications judge, which was by definition temporary. In the circumstances, the arguments set out in Mr Gaberamadhien's appeal against the order rejecting his application have become devoid of purpose.
>
> ..."

20. By a decision of 7 November 2005 served on 9 November 2005, OFPRA granted the applicant refugee status. As a result, from that point on, Article 33 of the Geneva Convention of 28 July 1951 relating to the Status of Refugees acted as a bar to the applicant's expulsion to his country of origin. The Government produced a memorandum from the deputy head of the Legal and International Affairs Division of OFPRA attesting to this. The memorandum stated that "the Agency therefore considered in view, among other considerations, of the inhuman conditions of imprisonment to which

[the applicant] had already been subjected in his country of origin, that his removal to Eritrea would place him at risk of persecution within the meaning of the Geneva Convention.”

21. The applicant stated that, during his time in the waiting zone in Roissy airport, the authorities had omitted to carry out a medical examination capable of establishing whether his scars and injuries were the result of ill-treatment. However, he had been able on several occasions (on 6, 7, 11 and 12 July 2005) to meet with an employee from ANAFE in the organisation's office in the airport waiting zone. On 15 July 2005 ANAFE drew up a written statement (produced by the applicant) certifying that the employee in question, in the course of her interviews with him, had observed traces of burns on one of his arms at least. The statement added that she had noted “a hollow in the [applicant's] lower back, which he explained had resulted from the torture inflicted on him in the Zara camp. He mimed the position in which he had been forced to remain during his detention, lying face down and with his feet and hands tied above his back”. The applicant also produced a statement written on the same day by the employee herself. In addition, apparently under the guidance of ANAFE, the applicant was examined on 17 July 2005 by Dr Lam of the Roissy medical unit of Robert Ballanger Hospital, who issued a medical certificate stating that the applicant did not require any specific medical treatment, but noting the presence of “old scars on the left arm and the right and left knee”.

II. RELEVANT LAW AND PRACTICE

A. Right of asylum

22. The fourth paragraph of the preamble to the French Constitution reads as follows:

> “Any person persecuted on account of his or her actions in furtherance of freedom shall have a right of asylum within the territories of the Republic.”

The *Conseil d'Etat* has ruled that the constitutional right of asylum is a fundamental freedom and has as its corollary the right to apply for refugee status. This implies that aliens who request refugee status are authorised in principle to remain on French soil pending a ruling on their application. The *Conseil d'Etat* has also specified that only if an asylum application is “manifestly unfounded” (see paragraph 23 below) may the Minister of the Interior refuse leave to enter the country, after consulting the French Agency for the Protection of Refugees and Stateless Persons (OFPRA) (see, for example, *Ministry of the Interior v. Mbizi Mpassi Gallis*, order of 24 October 2005).

23. Under the terms of the Immigration and Asylum Code:

Article L.711-1

"Refugee status shall be granted to any person persecuted on account of his or her activities in furtherance of freedom and to any person in respect of whom the Office of the United Nations High Commissioner for Refugees exercises its mandate under the terms of Articles 6 and 7 of its Statute as adopted by the United Nations General Assembly on 14 December 1950, or who meets the criteria laid down in Article 1 of the Geneva Convention of 28 July 1951 relating to the Status of Refugees. Such persons shall be governed by the applicable provisions concerning refugees laid down in the above-mentioned Geneva Convention."

Article L.712-1

"Subject to the provisions of Article L. 712-2, subsidiary protection shall be afforded to persons who do not satisfy the criteria for obtaining refugee status referred to in Article L.711-1 but who demonstrate that they would be exposed to the following serious threats in their country:

(a) the death penalty;

(b) torture or inhuman or degrading treatment or punishment;

(c) in the case of civilians, a serious, direct and individual threat to their life or personal safety on account of widespread violence resulting from domestic or international armed conflict."

Article L.713-2

"The persecution taken into account in granting refugee status and the serious threats which may result in the granting of subsidiary protection may emanate from the State authorities, parties or organisations which control the State or a substantial part of the territory of the State, or from non-State agents in cases where the authorities defined in the following paragraph are unwilling or unable to afford protection.

The authorities in a position to afford protection may be the State authorities or international and regional organisations."

Article L.713-3

"Persons who have access to protection in part of the territory of their country of origin may have their asylum application refused if they have no reason to fear persecution or a serious threat there and if it is reasonable to consider that they can remain in that part of the country. Account shall be taken of the overall conditions prevailing in that part of the country and of the personal situation of the applicant and the perpetrator of the persecution at the time a decision is taken on the asylum application."

24. Under the terms of Article 1 A (2) of the Geneva Convention of 28 July 1951 (ratified by France on 23 June 1954) and Article 1 of the New York Protocol of 31 January 1967 relating to the Status of Refugees (to which France acceded on 3 February 1971), a "refugee" is any person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it". Article 33 of the Geneva Convention reads as follows:

Article 33 - Prohibition of expulsion or return ("refoulement")

> "1. No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
>
> ..."

B. Procedure for claiming asylum at the border and holding of persons in the waiting zone

1. *Procedure for claiming asylum at the border*

25. The purpose of the procedure for claiming asylum at the border is to grant or refuse leave to enter France to aliens who arrive at the border by air without the necessary documents and request leave to enter the country as asylum seekers. The procedure falls within the sphere of competence of the Interior Ministry, which takes the decision whether or not to grant leave to enter, after consulting OFPRA (Decree of 21 July 2004 amending Article 12 of the Decree of 27 May 1982).

26. Article L.221-1 of the Immigration and Asylum Code states that "an alien who arrives in France by rail, sea or air and who (a) is refused leave to enter French territory or (b) applies for asylum may be held in a waiting zone ... for the time strictly necessary to arrange his departure and, if he is an asylum seeker, to investigate whether his application is manifestly unfounded".

The Government indicated that the criteria applied in assessing whether or not requests for asylum made at the border were "manifestly unfounded" were based on those contained in the resolutions adopted by the ministers of the Member States of the European Communities responsible for

immigration, meeting in London on 30 November and 1 December 1992, and on OFPRA's experience and practice. The criteria were as follows: "the grounds of the application are not asylum-related (economic grounds, pure personal convenience, etc.); the application is based on deliberate fraud (the applicant makes manifestly false claims as to his nationality, makes false statements, etc.); the applicant's statements are devoid of any substance, do not contain any personal information or provide insufficient detail; the applicant refers to a general situation of unrest or insecurity, without providing evidence relating to his personal situation; his statements are fundamentally inconsistent or improbable or contain major contradictions, depriving his account of any credibility". In a judgment adopted in plenary on 18 December 1996 in the case of *Rogers,* the *Conseil d'Etat* held that the above resolutions did not have legal effect and could not therefore be relied on in assessing whether an asylum application was "manifestly unfounded".

27. Aliens who apply for asylum at the border may do so on arrival or at any time while in the waiting zone. The application is to be made to the border police, who draw up an asylum application report and forward the file to the Ministry of the Interior. All applicants are interviewed by an official from OFPRA's border asylum office with a view to establishing the reasons for the application. The office sends the Interior Ministry a written recommendation stating its opinion as to whether or not the application is manifestly unfounded. The Ministry then decides whether or not to grant the applicant leave to enter France.

If leave to enter is granted, the border police issue a safe conduct which gives the person concerned eight days in which to submit an asylum application under the ordinary-law procedure.

If entry is refused, the person concerned is immediately returned to his or her country of origin or the country of provenance.

28. As with all administrative decisions, an application may be made to the administrative court seeking the setting-aside of a decision refusing leave to enter. The application does not have suspensive effect.

An "urgent application for a stay of execution" (*référé suspension*) or an "urgent application for an order to protect the applicant's interests" (*référé injonction*) (also known as an "urgent application for the protection of a fundamental freedom" – *référé liberté*) – neither of which has suspensive effect – may also be made under Articles L.521-1 and L.521-2 of the Administrative Courts Code, which provide:

Article L.521-1

"When an application is made to set aside or vary an administrative decision, including a refusal, the urgent-applications judge may order that execution of the decision or certain of its effects be stayed, where the urgent nature of the matter warrants it and where grounds are advanced capable of raising serious doubts, as the evidence stands, as to the lawfulness of the decision.

Where an order is made staying execution, a ruling shall be given as soon as possible on the application to have the decision set aside or varied. The stay of execution shall end at the latest when a decision is taken on the application to have the decision set aside or varied."

Article L.521-2

"Where such an application is submitted to him or her as an urgent matter, the urgent-applications judge may order whatever measures are necessary to protect a fundamental freedom which has been breached in a serious and manifestly unlawful manner by a public-law entity or an organisation under private law responsible for managing a public service, in the exercise of their powers. The urgent-applications judge shall rule within forty-eight hours."

Article L.522-1 of the Code states that the urgent-applications judge must in principle give a ruling following written or oral adversarial proceedings. Where the judge is requested to order the measures referred to in Articles L.521-1 and L.521-2 or to amend or discontinue such measures, he must inform the parties without delay of the date and time of the public hearing. However, Article L.522-3 provides for a "filtering" procedure which allows the urgent-applications judge, simply by means of an order giving reasons, to reject an application without giving the parties notice to appear or holding an adversarial hearing, if the matter is not urgent or if "it is clear from examination of the application that it does not fall within the jurisdiction of the administrative court, is inadmissible or is unfounded".

An appeal may be lodged with the *Conseil d'Etat* within fifteen days of the decision being served. The *Conseil d'Etat* must rule within forty-eight hours.

The *Conseil d'Etat* has specified that the notion of "fundamental freedom" within the meaning of Article L.521-2 of the Administrative Courts Code "encompasses, in the case of non-nationals who are the subject of specific measures governing their entry into and residence in France and who therefore, unlike French nationals, do not have free entry into the country, the constitutional right of asylum and its corollary, the right to apply for refugee status, the granting of which is decisive for the exercise by those persons of the freedoms enjoyed by non-nationals generally" (order of 12 January 2001 by the urgent-applications judge in *Hyacinthe*; see also the order of 24 October 2005 in *Mbizi Mpassi Gallis*).

In accordance with the principles of French administrative law, an urgent application, like any application to the courts, does not result in the immediate suspension of an administrative decision. However, the Government stated that "in very general terms, where the administrative authority [was] aware that an urgent application ha[d] been made to the administrative courts, it suspend[ed] the measure refusing asylum until the judge ha[d] given a ruling".

2. Holding of persons in the waiting zone

29. The initial decision to hold a person in the waiting zone is made by the administrative authority in writing and giving reasons, for a period not exceeding forty-eight hours. The measure may be extended once on the same basis and for the same period (Article L.221-3 of the Immigration and Asylum Code). The liberties and detention judge intervenes for the first time after four days in order to decide whether or not to extend the measure by a maximum of eight days. He or she intervenes again at the end of that period to rule on whether an exceptional extension of a further maximum of eight days should be granted (Articles L.222-1 and L.222-2).

In principle, therefore, the maximum period for which a person can be held in the waiting zone is twenty days. In exceptional cases, however, if an asylum application is made between the sixteenth and twentieth day, the liberties and detention judge may order an extension of four days from the date of the application (Article L.222-2).

The liberties and detention judge gives a ruling in the form of an order, after hearing evidence from the person concerned, in the presence of his or her lawyer if he or she has one, or after the latter has been duly informed. The judge may order extension of the measure or may refuse the request for extension and either release the person in question or place him or her under house arrest. The judge has discretion to rule on the application to extend made by the administrative authorities and may dismiss the grounds advanced by the authorities for the application and reject it accordingly (the Court of Cassation has specified that holding a person in the waiting zone "is simply one option open to the judge"; Court of Cassation, Second Civil Division, 8 July 2004). Normally speaking, the ruling is given in public (Article L.222-4). An appeal lies against such an order to the President of the Court of Appeal or his or her delegate, who must rule within forty-eight hours (Article L.222-6).

30. Aliens held in the waiting zone must be informed as soon as possible that they may request the assistance of an interpreter and a doctor, may speak to a lawyer or any other person of their choosing and may leave the waiting zone at any time for a destination outside France. This information must be conveyed to them in a language they understand (Article L.221-3).

The alien may request the judge to appoint a lawyer to represent him or her (Article L.222-4). The State pays the lawyer's fees and those of the interpreters appointed to assist the alien during the court proceedings concerning his or her confinement in the waiting zone (Article L.222-7).

State Counsel and, after the first four days have elapsed, the liberties and detention judge, may visit the waiting zone to inspect the conditions in which the person concerned is being held. State Counsel may visit the waiting zones whenever he or she deems necessary and must do so at least once a year. The French delegation to the Office of the United Nations High Commissioner for Refugees (UNHCR), as well as some humanitarian

associations, have access to the waiting zone as provided by Decree no. 95-507 of 2 May 1995 as amended. In particular, they may hold talks in confidence with asylum seekers being held there (Articles L.221-1 et seq. of the Immigration and Asylum Code). The Government informed the Court that, in accordance with an agreement concluded between the State and ANAFE, the latter was entitled to be present round the clock in order to provide legal assistance to aliens; the Red Cross was also on hand to provide humanitarian assistance (likewise under the terms of an agreement).

C. Lodging and examination of the asylum application and appeals

31. OFPRA, a public agency with legal personality and financial and administrative autonomy attached to the Ministry of Foreign Affairs (Article L.721-1 of the Immigration and Asylum Code) is the authority responsible for granting refugee status and subsidiary protection (Articles L.713-1 and L.721-2).

The asylum seeker must report to a prefecture in order to obtain a temporary residence permit (*autorisation provisoire de séjour – APS*) valid for one month and to fill out the asylum application form. On receipt of the file, OFPRA sends the asylum seeker a "letter of registration" which enables him or her, among other things, to obtain an acknowledgement of receipt of the asylum application. This is valid for three months and can be renewed until such time as a decision has been taken by OFPRA and, as the case may be, by the Refugee Appeals Board.

OFPRA gives its decision after a single examination procedure during which the asylum seeker is given the opportunity to submit evidence in support of his or her claim and, as a rule, after evidence has been heard from the asylum seeker (Articles L.723-2 and L.723-3).

32. A decision by OFPRA refusing an application taken under Articles L.711-1 and L.712-1 in particular may be appealed within one month before the Refugee Appeals Board (Article L.731-2), an administrative court with a president who is a member of the *Conseil d'Etat* and is appointed by the latter's Vice-President (Article L.731-2). The persons concerned may make representations to the Appeals Board and be assisted by a lawyer and an interpreter (Article L.733-1).

In principle, this appeal has suspensive effect and the temporary residence permit is renewed until the Board has reached its decision (section 9 of the Act of 25 July 1952). In that connection, Article L.742-3 of the Immigration and Asylum Code states as follows:

> "Aliens who are granted leave to enter France shall have the right to remain until OFPRA's decision has been served or, where an appeal is lodged, until the decision of the Appeals Board has been served. They shall have one month from the date of service of the decision not to extend or to withdraw their residence permit in which to leave French territory of their own accord."

The *Conseil d'Etat* has also established the principle whereby aliens seeking refugee status have the right to remain in the country temporarily until a decision has been taken on their application, provided the application is not vexatious or submitted with undue delay (*Conseil d'Etat* plenary, 13 December 1991, *M.N.*).

33. An appeal on points of law against the decision of the Refugee Appeals Board may be lodged with the *Conseil d'Etat* within two months. However, such appeal does not have suspensive effect (*Conseil d'Etat*, 6 March 1991, *M.D.*).

34. An alien whose application for refugee status or for subsidiary protection has been the subject of a final refusal and who is not authorised to remain in France on any other basis, must leave the country or face removal (Article L.742-7 of the Code). Aliens facing removal may, within forty-eight hours of the order for their removal being served (if it is served by means of administrative procedure) or within seven days (if it is served by post), apply to the president of the administrative court to have the order set aside. The president or his or her delegate must rule on the application within seventy-two hours (Article L.512-2 of the Code). The order may not be enforced before these time-limits have expired or, where an application is made to the president of the administrative court or his or her delegate, until he or she has given a ruling (Article L.512-3). An appeal against the judgment of the president of the administrative court or his or her delegate may be made within one month to the president of the Judicial Division of the *Conseil d'Etat* or a member of the *Conseil d'Etat* to whom he or she delegates his or her powers; such appeal does not have suspensive effect (Article L.512-5 of the Code).

35. Under Article L.742-6 of the Code, if the person concerned is granted refugee status or subsidiary protection, the administrative authority must repeal any order made for his or her removal. In the case of refugees, it must immediately issue the residence permit provided for in Article L.314-11, point 8 (valid for ten years and automatically renewable); in the case of persons granted subsidiary protection, it must immediately issue the temporary residence permit provided for in Article L.313-13 (valid for one year, renewable).

III. OVERVIEW OF COUNCIL OF EUROPE ACTIVITIES

A. The Committee of Ministers

36. On 18 September 1998 the Committee of Ministers adopted Recommendation No. R (98) 13 on the right of rejected asylum seekers to an effective remedy against decisions on expulsion in the context of Article 3 of the European Convention on Human Rights, in which it called

on member States to ensure that the following guarantees were complied with in their legislation or practice:

> "1. An effective remedy before a national authority should be provided for any asylum seeker, whose request for refugee status is rejected and who is subject to expulsion to a country about which that person presents an arguable claim that he or she would be subjected to torture or inhuman or degrading treatment or punishment.
>
> 2. In applying paragraph 1 of this recommendation, a remedy before a national authority is considered effective when:
>
> 2.1. that authority is judicial; or, if it is a quasi-judicial or administrative authority, it is clearly identified and composed of members who are impartial and who enjoy safeguards of independence;
>
> 2.2. that authority has competence both to decide on the existence of the conditions provided for by Article 3 of the Convention and to grant appropriate relief;
>
> 2.3 the remedy is accessible for the rejected asylum seeker; and
>
> 2.4 the execution of the expulsion order is suspended until a decision under 2.2 is taken."

On 4 May 2005 the Committee of Ministers adopted "twenty guidelines on forced return". Guideline 5 reads as follows:

> "Guideline 5. Remedy against the removal order
>
> 1. In the removal order, or in the process leading to the removal order, the subject of the removal order shall be afforded an effective remedy before a competent authority or body composed of members who are impartial and who enjoy safeguards of independence. The competent authority or body shall have the power to review the removal order, including the possibility of temporarily suspending its execution.
>
> 2. The remedy shall offer the required procedural guarantees and present the following characteristics:
>
> – the time-limits for exercising the remedy shall not be unreasonably short;
>
> – the remedy shall be accessible, which implies in particular that, where the subject of the removal order does not have sufficient means to pay for necessary legal assistance, he/she should be given it free of charge, in accordance with the relevant national rules regarding legal aid;
>
> – where the returnee claims that the removal will result in a violation of his or her human rights as set out in guideline 2.1, the remedy shall provide rigorous scrutiny of such a claim.
>
> 3. The exercise of the remedy should have a suspensive effect when the returnee has an arguable claim that he or she would be subjected to treatment contrary to his or her human rights as set out in guideline 2.1. [real risk of being executed, or exposed to torture or inhuman or degrading treatment or punishment; real risk of being killed or subjected to inhuman or degrading treatment by non-state actors, if the authorities of

the state of return, parties or organisations controlling the state or a substantial part of the territory of the state, including international organisations, are unable or unwilling to provide appropriate and effective protection; other situations which would, under international law or national legislation, justify the granting of international protection].”

B. The Parliamentary Assembly

37. As far back as 12 April 1994, the Parliamentary Assembly adopted Recommendation 1236 (1994) on the right of asylum, in which it recommended that the Committee of Ministers insist that asylum procedures provide that “while appeals [were] being processed, asylum seekers [could] not be deported”. In Recommendation 1327 (1997) on the protection and reinforcement of the human rights of refugees and asylum-seekers in Europe, adopted on 24 April 1997, it called upon the Committee of Ministers “to urge the member states ... to provide in their legislation that any judicial appeal should have suspensive effect”.

In its Resolution 1471 (2005) on accelerated asylum procedures in Council of Europe member states, adopted on 7 October 2005, the Parliamentary Assembly stressed in particular that “the need for states to process asylum applications in a rapid and efficient manner must ... be weighed against the obligation to provide access to a fair asylum determination procedure for those who are in need of international protection”. It specified that this “balancing of interests” did “not imply in any circumstances that states may compromise with respect to their international obligations, including under the 1951 Geneva Convention relating to the Status of Refugees ... and its 1967 Protocol and the 1950 European Convention on Human Rights ... and its Protocols”.

In that resolution, the Parliamentary Assembly called on the governments of the Council of Europe member States to take the following measures (among others):

“...

8.4. as regards border applicants, to:

8.4.1. ensure, in accordance with the principle of non-discrimination, that all asylum seekers are registered at the border and given the possibility of lodging a claim for refugee status;

8.4.2. ensure that all asylum seekers, whether at the border or inside the country, benefit from the same principles and guarantees in terms of their request for refugee status;

8.4.3. ensure adoption of clear and binding guidelines on treatment of asylum seekers at border points, in accordance with international human rights and refugee law and standards;

> 8.5. as regards the right of appeal with suspensive effect: to ensure that the right to an effective remedy under Article 13 of the European Convention on Human Rights is respected, including the right to lodge an appeal against an unfavourable decision and the right to suspend the execution of measures until the national authorities have examined their compatibility with the European Convention on Human Rights;
>
> ...”

C. The Commissioner for Human Rights

38. The Commissioner for Human Rights issued a recommendation concerning the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders (Comm(DH/Rec(2001)19). The recommendation, dated 19 September 2001, stresses in particular the following:

> “11. It is essential that the right of judicial remedy within the meaning of Article 13 of the ECHR be not only guaranteed in law but also granted in practice when a person alleges that the competent authorities have contravened or are likely to contravene a right guaranteed by the ECHR. The right of effective remedy must be guaranteed to anyone wishing to challenge a refoulement or expulsion order. It must be capable of suspending enforcement of an expulsion order, at least where contravention of Articles 2 or 3 of the ECHR is alleged.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 3

39. The applicant, who submitted that he would run a risk of torture or inhuman or degrading treatment if he were removed to Eritrea, complained of the absence in domestic law of a remedy with suspensive effect in respect of decisions refusing aliens leave to enter the country and ordering their removal, whether or not they were asylum seekers and whatever the risks, alleged or real. He relied on Articles 13 and 3 of the Convention taken together, which provide:

> “Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

> “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. The parties' submissions

1. The applicant

40. The applicant submitted first of all that, according to the Court's case-law, it was not necessary to establish that there had been an actual violation of the rights and freedoms recognised by the Convention in order to complain of a violation of Article 13: the right to an effective remedy was recognised to any person who claimed that one of those rights or freedoms had been violated provided the claim was “arguable” for the purposes of the Convention.

He further pointed out that in his case – after the remedies at issue had been exercised and after a combination of circumstances (lack of knowledge as to his origins and refusal by the Eritrean embassy to issue a laissez-passer), followed by the interim measure indicated by the Court – had prevented his being removed as planned, the French authorities had granted him refugee status and issued him with a residence permit. He noted that the Court had deduced from this, in its admissibility decision, that he had lost his status as “victim” with regard to Article 3. However, in the applicant's view, that did nothing to detract either from the arguable nature of the complaint under Article 3 or from the fact that persons who sought asylum at the border, as he had done, did not have available to them an “effective remedy” within the meaning of Article 13 by which to avoid removal to a country where they ran the risk of being subjected to torture or inhuman or degrading treatment or punishment.

41. Next, the applicant submitted that, in law, only if an application for asylum at the border was “manifestly unfounded” could the person concerned be refused leave to enter and be removed. In the absence of effective review by the courts, however, the administrative authorities were applying this concept improperly, as his own case illustrated. He produced a document from the French Interior Ministry entitled “Asylum at the border – 2004 figures”, which showed that 92.3% of asylum claims lodged at border points had been declared manifestly unfounded in 2004. (The figure for 2003 had been 96.2%; nevertheless, in practice, almost one applicant in two – 48%, or 1,247 persons – had been granted leave to enter in 2004, either because the person concerned had been refused permission to board, the legal time-limit for holding the person in the waiting zone had expired, no return flight could be scheduled, there had been nowhere to send the person to or an order in the person's favour had been made by the liberties and detention judge.) As to the rise in the number of favourable

recommendations made by OFPRA in 2005, referred to by the Government – a rise which had to be seen in context, as almost 88% of the applications had nevertheless been rejected as "manifestly unfounded" – this had been due to a change in the way the proportion of favourable decisions was calculated and to the arrival that year at Roissy airport of large numbers of Chechens and Cuban dissidents.

Forced and systematic return of applicants within hours of their application being rejected as "manifestly unfounded" was the rule. Hence, the average stay in the waiting zone was 1.82 days, and 89% of claims for asylum at the border were dealt with in four days or less. The applicant considered that "the very structure of the system of court protection for asylum seekers at the border [was] ineffective and fail[ed] to guarantee fundamental rights".

42. As to the avenues of appeal against a decision refusing admission, the applicant submitted first of all that the procedure involving an urgent application to the president of the administrative court (Articles L.521-1 and L.521-2 of the Administrative Courts Code) – of which he had made use, without success – was ineffective as it did not have suspensive effect and was subject to very stringent conditions which were strictly interpreted (the person concerned had to prove the existence of a serious and manifestly unlawful breach of a fundamental freedom). The French system was similar in that regard to the Belgian system which the Court, in *Čonka v. Belgium* (5 February 2002, no. 51564/99, ECHR 2002-I), had found to be in breach of the requirements of Article 13 for that reason. The applicant further submitted that, contrary to the Government's assertions, there was no "consistent" practice whereby the authorities refrained from removing the person concerned pending a ruling by the urgent-applications judge. Referring to the *Čonka* judgment (cited above, § 83), the applicant added that in any event such a practice, which was dependent on the goodwill of one party and could be ended at any time, "was no substitute for the fundamental procedural guarantee offered by a remedy with suspensive effect".

In addition, the judges on duty at the Cergy-Pontoise Administrative Court (who were those most immediately concerned, since requests for asylum at the border were made almost exclusively at Roissy airport), made more or less systematic use of the "filtering" procedure to reject applications as "manifestly unfounded"; this was demonstrated by the response to the applicant's own urgent application. In such cases the judge gave a ruling without a public or adversarial hearing being held and without the presence of the person concerned, relying solely on the documents produced by the latter (which were usually not translated) and on unfavourable, stereotyped decisions by the administrative authorities.

It was true that in 2004 the urgent-applications judge of the Cergy-Pontoise Administrative Court had given a favourable decision in 17

of the 39 cases submitted to him (43.6%). However, one had only to look at these figures in the light of the 2,548 requests for asylum recorded in the waiting zones that year to realise that they reflected not so much the effectiveness of the procedure as a denial of the rights of asylum seekers in the waiting zones. Indeed, the persons concerned were frequently removed before an administrative judge had even given them notice to attend the hearing.

Furthermore, it would be unrealistic to imagine that a foreigner being held in a waiting zone pending his or her removal in accordance with an enforceable decision which could be enforced at any time, who did not necessarily speak French and did not have access to legal aid, would be in a position to make an application of this kind to the administrative court, submit four copies of it by registered letter or by depositing it with the registry, and manage such a technically complex procedure. The applicant was an exception in that regard, having received voluntary assistance from non-governmental organisations and from a lawyer. Even assuming that a remedy of this kind could be considered in principle to be effective within the meaning of Article 13, it could not be said to have been effective in the present case, since the applicant's application had been rejected immediately and in summary fashion, without there having been a detailed examination, an investigation, a hearing, adversarial proceedings or production and examination of evidence.

The only possible appeal against the decision of the urgent-applications judge was an appeal on points of law to the *Conseil d'Etat* which did not have suspensive effect. Such an appeal could be based only on formal or purely legal grounds (meaning that the assessment of the facts by the tribunal of fact in the exercise of its unfettered discretion could not be called into question), and required the participation of a prescribed specialist lawyer. It was virtually impossible for asylum seekers to obtain legal aid, as applicants had to be legally and habitually resident in France and had to submit an *ad hoc* application form in French accompanied by proof of income, and a decision was not given for several months. Here again, the applicant had been an exception, as he had been assisted free of charge by a specialist lawyer thanks to the intervention of his counsel at first instance and of ANAFE. In any event, in the instant case, the *Conseil d'Etat* had not given a decision until 11 August 2005, that is to say, over a month after the appeal had been lodged, and had then held that it was unnecessary to give a ruling.

43. The same would have been true had the applicant applied to the administrative courts for judicial review of the decision refusing him leave to enter and ordering his removal. It would have taken several years to obtain a decision on such an application and the court would in all likelihood have found, in line with existing case-law, that it was no longer necessary to give a ruling since the applicant had ultimately been granted

leave to enter the country thanks to the interim measure indicated to the Government by the Court under Rule 39 of the Rules of Court.

44. The applicant reaffirmed his belief that he had been saved only by the circumstances, in particular by the refusal of the Eritrean ambassador – to whom the French authorities had presented the applicant's account of events surrounding his asylum application, thereby making him even more vulnerable to retaliatory measures if he was removed to Eritrea – to issue a laissez-passer and, above all, by the application of Rule 39 of the Rules of Court.

2. The Government

45. The Government's main argument was that Article 13 taken in conjunction with Article 3 did not apply in the instant case. Firstly, since 7 November 2005 (the date on which he had obtained refugee status), the applicant no longer faced a risk of deportation, with the result that the complaint under Article 3 was no longer "arguable" and Article 13 could no longer be relied on in conjunction with that Article. Secondly, the Government argued, the applicant had lost his status as "victim", as Article 13 could not be dissociated from the Articles to which it applied. As he could no longer claim to be the victim of a violation of Article 3, he could not claim either to be the victim of a violation of Article 13 taken in conjunction with that Article.

46. In the alternative, the Government submitted that the complaint was unfounded.

47. They submitted that the "urgent application for a stay of execution" procedure (Article L.521-1 of the Administrative Courts Code) and the procedure involving an "urgent application for an order to protect the applicant's interests" or "urgent application for the protection of a fundamental freedom" (Article 521-2 of the Code) made it possible to obtain a stay of execution of a measure liable to result in a violation of Article 3 of the Convention. Referring, in particular, to the judgments in *Soering v. the United Kingdom* (7 July 1989, § 123, Series A no. 161) and *Vilvarajah and Others v. the United Kingdom* (30 October 1991, § 125, Series A no. 215), the Government added that the required remedy did not have to have automatic suspensive effect: it was sufficient for it to have suspensive effect "in practice". This was the case with urgent applications to the administrative courts since, in practice, the authorities did not proceed with deportation until the urgent-applications judge had given a ruling.

The Government submitted that the applicant had exercised this remedy in respect of the decision refusing him leave to enter and that the application of 7 July 2005 to the urgent-applications judge had resulted in a ruling the following day. They considered that the applicant's case had therefore received a hearing which offered the guarantees of reliability and independence required by the Court's case-law, as the urgent-applications

judge had based his decision on objective evidence assessed in the exercise of his unfettered discretion.

48. The Government further stated that the proportion of favourable recommendations issued by OFPRA concerning applications made at border points had been 22.2% in 2005, that is, almost three times the rate of admission for that year under the procedure for claiming eligibility for asylum (8.2%). In their view, this difference demonstrated that applicants at the border were given the benefit of the doubt. They were not aware of any cases in which the removal of an alien had led subsequently to his or her being subjected to treatment contrary to Article 3 of the Convention or Article 33 of the Geneva Convention.

Replying to the observations made by ANAFE (see below), the Government added, in particular, that the procedure for examining asylum applications at the border had been substantially overhauled by Law no. 2003-1176 of 10 December 2003; the 9.3% rate of admission of asylum seekers at border points in 2004 should therefore be viewed in relation to the 2005 figure of 22.2%, previously cited. As to the length of time taken to examine asylum applications made at the border, this was explained by the legal time-limits for holding persons in the waiting zones. The Government further stressed that ANAFE had found only six cases between 1999 and 2005 in which an unfavourable recommendation issued at the border had been subsequently overturned and the person concerned granted refugee status. In their view, it was in any case difficult to draw a parallel between the procedures for requesting asylum at the border and on French soil, since the decisions taken concerned different cases. They did not have precise statistics on this point but stated that in 2005, OFPRA had issued 2,278 recommendations under the procedure for claiming asylum at the border.

B. Observations of the third-party intervener ANAFE

49. The observations made by ANAFE – a non-governmental organisation dedicated to providing legal and humanitarian assistance to aliens in difficulty at French border points – related to the situation of persons seeking asylum at the border. The organisation first made the point that it was aware of several cases (sixteen in 2006) in which aliens had encountered serious difficulties in registering their requests for leave to enter France in order to claim asylum. Some had to wait several days in the "international zone", without food and sleeping on seats, before the airport and border police agreed to deal with their request and gave them access to the "waiting zone".

ANAFE also referred to the communication problems encountered by asylum seekers at the border in seeking admission, due to the poor standard and unsuitable nature of the interpretation provided.

The organisation went on to comment on the figures for asylum claims at the border published by OFPRA. The number of asylum applications at the border had fallen by 57% in 2004 and by 9.4% in 2005; 7.7% of applicants had been given leave to enter the country in 2004, and 22.2% in 2005. In ANAFE's view, this reduction in the numbers seeking asylum at the border was a result of the measures implemented by the Government to prevent foreigners from coming to France (in violation of the Geneva Convention when the persons concerned were refugees). As examples of these measures, the organisation cited the increased use of airport transit visas (which were now required from nationals of some thirty countries), the severe penalties imposed on carriers and the checks on leaving the aircraft (it was not uncommon for persons to be refused entry following such checks before they had even had a chance to register an asylum request).

ANAFE added that in 2005, according to the data provided by the Interior Ministry, 89% of asylum claims made at the border had been dealt with within four days of being lodged. The investigation consisted of an interview and the drafting of a recommendation by an official from OFPRA, followed by a decision by the Interior Ministry (which was generally in line with the recommendation). ANAFE stressed that asylum seekers often did not have any documents to substantiate their claim and that the speed with which claims were processed made it difficult for them to obtain the necessary papers. The organisation complained in particular of the fact that the administrative authorities, in determining whether or not an application was “manifestly unfounded”, examined its merits in detail, whereas they were supposed to just check briefly whether the reasons given by the asylum seeker meant that he or she required protection, in order to screen out persons wishing to enter France for other reasons (work, family reunion and so forth) without following the visa procedure. By doing this, the authorities were denying asylum seekers the guarantees offered by the procedure for requesting asylum after leave to enter the country had been granted. (This entailed a decision by OFPRA – which had the resources needed to conduct the research and investigation required – taken following a comprehensive examination of the application and amenable to an appeal with suspensive effect.) It was not uncommon for asylum seekers whose application at the border had been declared “manifestly unfounded” to gain entry to the country by another means and subsequently obtain refugee status. In support of this assertion, ANAFE described the cases of six persons who had found themselves in this situation in 2004 or 2005 (some of whom had been the subject of criminal sanctions in the meantime for failing to comply with the order for their removal). It also produced a statement dated 19 April 2006 by the Secretary General of Cimade, an ecumenical non-governmental mutual-aid organisation which worked in administrative detention centres.

50. In addition, ANAFE produced a report it had published on 25 November 2003 on the procedure governing admission to the country as an asylum seeker, entitled "The Russian roulette of asylum at the border – the waiting zones: who is misapplying the procedure?" (*La roulette russe de l'asile à la frontière – zone d'attente: qui détourne la procédure?*), in which it outlined its "concerns" with regard to the procedure for seeking asylum at the border. It stressed in particular that there was "no appeal" against an unfavourable decision by the administrative authorities since, in the absence of a remedy with suspensive effect, applicants could be removed to the country they had come from solely on the basis of that refusal. According to ANAFE:

> "... This filtering which is carried out at the border in relation to thousands of people each year, without any effective review by the administrative courts, has always given priority to controlling the flow of migrants rather than protecting refugees. But for over a year now the administrative machinery has gone into overdrive and hundreds of asylum seekers are being removed, sometimes on charter flights organised by the Interior Ministry, although they have serious reasons to fear persecution by the authorities in their country of origin or, in some cases, even in the country where they were in transit for a certain length of time. Others are not removed from the country but are sentenced to imprisonment purely for refusing to comply with a decision whose lawfulness and legitimacy are, to say the least, debatable. For fifteen years ANAFE ... has been attempting to assist these persons clinging to the wreckage of the right of asylum. It has observed the drift towards ever harsher administrative practices, which are reducing to nothingness the constitutional right to claim asylum..."

In its report, ANAFE observed a substantial drop in the proportion of asylum seekers being granted leave to enter the country (falling from 60% in 1995 to 20% in 2001 and 2002, 18.8% in November 2002 and 3.4% in March 2003), which it attributed to a deliberate policy on the part of the authorities. Analysing a series of decisions refusing access to the country during 2003, it concluded that this was the result of a "dangerous misapplication" by the administrative authorities of the notion of "manifestly unfounded" within the meaning of Article L.221-1 of the Immigration and Asylum Code. The reasons given by the administrative authorities "[went] far beyond the confines of a strict examination as to whether applications [were] 'manifestly unfounded' and contain[ed] arguments of an increasingly unacceptable nature aimed at justifying the rejection of asylum applications." According to ANAFE, it was clear from the case-law "that such examination should be confined to a superficial assessment exclusively designed to filter out applications which manifestly [did] not fall within the scope of the right of asylum, hence leaving the task of assessing and checking applications to OFPRA" (it referred in that regard to Constitutional Council decision DC 92 307 of 25 February 1992 and the judgment of the *Conseil d'Etat*, sitting as a full court, of 18 December 1996 in *Rogers* (*Revue française de droit administratif*, 1997-2, p. 281) and to a

decision by the Paris Administrative Court of 5 May 2005 in *Avila Martinez v. the Ministry of the Interior*). In ANAFE's view, "what happened in practice [was] very far removed from this theory and from the case-law".

51. ANAFE stated that on 5 March 2004 it had signed an agreement with the Interior Minister (which was subsequently renewed) allowing it, for a six-month trial period, to provide regular assistance to foreigners who had been refused entry into France and were being held in the waiting zone in Roissy airport. It produced a document entitled "The border and the law: the Roissy waiting zone as observed by ANAFE" (*La frontière et le droit: la zone d'attente de Roissy sous le regard de l'ANAFE*), giving a detailed account of its experiences on the ground. In addition to the difficulties outlined above, the document criticised "a policy which appears to be wholly driven by considerations of security and border control to the detriment of human rights, in particular the right of asylum but also the right not to be subjected to inhuman or degrading treatment and the specific rights of minors", and also a "practice of almost systematically refusing leave to enter the country for asylum purposes, in breach of the Geneva Convention". According to ANAFE, "the procedure for seeking asylum at the border [was] increasingly likely to result in rejection and [was] inimical to the interests of the persons seeking protection".

52. Lastly, ANAFE produced the conclusions and recommendations of the United Nations Committee against Torture of 3 April 2006 concerning France, adopted on 24 November 2005 (document CAT/C/FRA/CO/3). Under the heading "Subjects of concern and recommendations" and the sub-heading "Non-refoulement", the Committee said it was "concerned about the summary nature of the so-called priority procedure for consideration of applications filed in administrative holding centres or at borders, which does not enable the risks covered by article 3 of the Convention [against torture and other cruel, inhuman or degrading treatment or punishment] to be assessed. ..." (According to article 3, "[n]o State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture..."). Point 7 of the report reads as follows:

> "7. While noting that, following the entry into force of the Act of 30 June 2000, a decision on the refoulement of a person (refusal of admission) may be the subject of an interim suspension order or an interim injunction, the Committee is concerned that these procedures are non-suspensive, in that 'the decision to refuse entry may be enforced ex officio by the administration' after the appeal has been filed but before the judge has taken a decision on the suspension of the removal order (art. 3).
>
> The Committee reiterates its recommendation (A/53/44, para. 145) that a refoulement decision (refusal of admission) that entails a removal order should be open to a suspensive appeal that takes effect the moment the appeal is filed. The Committee also recommends that the State party should take the necessary measures to ensure that individuals subject to a removal order have access to all existing

> remedies, including referral of their case to the Committee against Torture under article 22 of the Convention."

ANAFE added that the National Advisory Committee on Human Rights had adopted a recommendation in which it stated that "any decision refusing admission which entail[ed] the return of the asylum seeker concerned must be open to a suspensive appeal lodged with the administrative courts within a reasonable time".

C. The Court's assessment

53. First of all, the Court reiterates the general principles arising out of its case-law.

Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law. The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see, among many other authorities, *Čonka*, cited above, § 75).

54. Next, the Court notes that under domestic law a decision to refuse leave to enter the country such as that taken in the applicant's case acts as a bar to lodging an application for asylum; moreover, such a decision is enforceable, with the result that the individual concerned can be removed immediately to the country he or she claims to have fled. In the instant case, however, following the application of Rule 39 of the Rules of Court, the applicant was eventually granted leave to enter France. As a result, he was able to lodge an asylum application with OFPRA, which granted him refugee status on 7 November 2005. Since, under Article 33 of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, the applicant could then no longer be deported to his country of origin, the Court concluded in its admissibility decision of 10 October 2006 (§ 36) that he had lost his status as a victim of the alleged violation of Article 3. On the basis of this finding in relation to the complaint under Article 3, the Court concluded that "a question [arose in the instant case] as to the applicability

of Article 13 taken in conjunction with that Article”. It joined that question to the merits (see admissibility decision, § 49).

55. On this last point the Government submitted that, since 7 November 2005 (the date on which he had been granted refugee status), the applicant no longer faced any threat of deportation, with the result that the complaint under Article 3 was no longer “arguable” and Article 13 could therefore no longer be relied on in conjunction with that Article.

The Court does not share this point of view. It points out that in its admissibility decision (§ 49), it found that the applicant's argument as to the risk of ill-treatment in Eritrea was sufficiently credible for the Court to consider that it raised an issue of substance under Article 3. It follows that the complaint under Article 3 is “arguable”, with the result that the applicant is entitled in principle to rely on that provision in conjunction with Article 13 (in addition to the *Rotaru v. Romania* judgment ([GC], no. 28341/95, ECHR 2000-V, § 67), cited in the admissibility decision, and *Čonka*, cited above, §§ 75-76, see, for example, the judgment in *Shamayev and Others v. Georgia and Russia*, no. 36378/02, §§ 444-45, ECHR 2005-III). Moreover, far from calling into question the arguable nature of this complaint, the fact that OFPRA subsequently granted the applicant refugee status confirms it, as does the memorandum from the deputy head of OFPRA's Legal and International Affairs Division, which stated that “the Agency therefore considered in view, among other considerations, of the inhuman conditions of imprisonment to which [the applicant] had already been subjected in his country of origin, that his removal to Eritrea would place him at risk of persecution within the meaning of the Geneva Convention” (see paragraph 20 above).

56. The Court is not persuaded either by the Government's argument that, as Article 13 was inextricably linked to the Articles of the Convention with which it was combined, the applicant could no longer claim to be a victim of a violation of Article 13 taken in conjunction with Article 3, given that he was no longer a victim of the alleged violation of the latter provision.

Firstly, the alleged violation in this respect (relating to shortcomings in the procedure available to individuals who, on arrival at the border, claim that they face a risk of treatment prohibited by Article 3 and request leave to enter the country in order to lodge an asylum application) had already occurred at the time the threat of the applicant's removal to Eritrea was lifted (as to the importance of this factor see, *mutatis mutandis*, *Association SOS Attentats and de Boery v. France* [GC], (dec.), no. 76642/01, § 34, ECHR 2006-...). The applicant was granted refugee status on 7 November 2005, that is, quite some time after the last decision by the domestic courts on the appeal whose ineffectiveness he complained of before the Court, since the decision of the *Conseil d'Etat* that it was unnecessary to rule on the

appeal against the order of 8 July 2005 by the urgent-applications judge was given on 11 August 2005 (see paragraph 19 above).

Secondly, as the Court reiterated in its decision on the admissibility of the application (§ 36), a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a victim unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the alleged breach of the Convention. It is quite clear in the instant case that those conditions have not been met in relation to the complaint under Articles 13 and 3 taken together. The fact that the applicant was not removed to Eritrea and was eventually able to enter France to lodge an asylum application appears to have been due to his not being issued with a laissez-passer by the Eritrean embassy and then to the application by the Court of Rule 39. Furthermore, the Court observes in this regard that the administrative authorisation to enter the country and the safe conduct issued on 20 July 2005, and also the decision of the *Conseil d'Etat* of 11 August 2005, referred expressly to Rule 39 and to the interim measure taken in accordance with that provision (see paragraphs 17 and 19 above).

57. The Court will therefore proceed with its examination of the merits of the complaint.

58. According to the Court's case-law, an applicant's complaint alleging that his or her removal to a third country would have consequences contrary to Article 3 of the Convention "must imperatively be subject to close scrutiny by a 'national authority'" (see *Shamayev and Others*, cited above, § 448; see also *Jabari v. Turkey*, no. 40035/98, § 39, ECHR 2000-VIII). On the basis of this principle, the Court has held that the notion of an "effective remedy" under Article 13 in conjunction with Article 3 requires "independent and rigorous scrutiny" of a claim by any individual in such a situation that "there exist substantial grounds for fearing a real risk of treatment contrary to Article 3" and also "the possibility of suspending the implementation of the measure impugned" (see the judgments cited above, § 460 and § 50 respectively).

More specifically, in the *Čonka* judgment (cited above, §§ 79 et seq.), the Court held, in relation to Article 13 taken together with Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens), that a remedy did not satisfy the requirements of the first of these provisions if it did not have suspensive effect. The Court found, in particular (§ 79):

> "The Court considers that the notion of an effective remedy under Article 13 requires that the remedy may prevent the execution of measures that are contrary to the Convention and whose effects are potentially irreversible (see, *mutatis mutandis*, *Jabari*, cited above, § 50). Consequently, it is inconsistent with Article 13 for such measures to be executed before the national authorities have examined whether they are compatible with the Convention, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision (see *Chahal*, cited above, p. 1870, § 145)."

Given the importance which the Court attaches to Article 3 of the Convention and to the irreversible nature of the damage liable to be caused if the risk of torture or ill-treatment materialises, this finding obviously applies in a case where a State Party decides to remove an alien to a country where there are substantial grounds for believing that he or she would run such a risk.

The Court further observes that the need for persons who run such a risk to have access to a remedy with suspensive effect in respect of the removal measure has been highlighted by the Committee of Ministers and the Parliamentary Assembly of the Council of Europe and by the Commissioner for Human Rights (see paragraphs 36-38 above). The same approach is taken by the United Nations Committee against Torture (see paragraph 52 above) and by several NGOs including the third-party intervener. In addition, according to the latter, the French National Advisory Committee on Human Rights adopted a recommendation in which it stated that “any decision refusing admission which entail[ed] the removal of the asylum seeker concerned must be open to a suspensive appeal lodged with the administrative courts within a reasonable time” (see paragraph 52 above).

59. With specific reference to asylum seekers who claim to run a risk of this nature, French law provides for a procedure which certainly possesses these characteristics, as it is based on adversarial examination of the asylum application by OFPRA (a public agency) and, on appeal, by the Refugee Appeals Board (a judicial body), and prohibits the removal of the asylum seeker during the procedure. The applicant was ultimately able to take advantage of this procedure, having been granted leave to enter France after Rule 39 of the Rules of Court had been applied.

However, the present case highlights a particular difficulty in that regard, concerning cases such as that of the applicant in which the person concerned reports to the authorities at a border point, for example at an airport.

60. In order to lodge an asylum application with OFPRA, aliens must be on French soil. Consequently, after arriving at the border, they cannot submit an application unless they have first been granted leave to enter the country. If they do not have the documents required for that purpose, they must apply for leave to enter the country as asylum seekers; they are then held in a “waiting zone” for the time needed for the administrative authorities to examine whether or not their planned asylum application is “manifestly unfounded”. If the administrative authorities deem the application to be “manifestly unfounded”, they refuse leave to enter the country and the individual concerned automatically faces removal without having had the opportunity to lodge an asylum application with OFPRA.

61. The applicant and the third-party intervener made the point, firstly, that the assessment of whether an application was “manifestly unfounded” was made following a brief examination of the asylum seeker's situation (as illustrated by the present case). The administrative authorities had only

twenty days at most in order both to assess whether the application was "manifestly unfounded" and, if it was so decided, to remove the individual concerned; this gave the latter little time to gather evidence in support of his or her application. (The third-party intervener made the point in particular that, in 2005, 89% of applications had been dealt with in less than four days, including the final ministerial decision.) In addition, the authorities applied this concept broadly, going well beyond a superficial assessment intended solely to filter out applications which manifestly did not fall within the scope of the right of asylum.

On the latter point, the Government stated that the criteria applied by the administrative authorities in assessing whether an application was "manifestly unfounded" were based on the detailed criteria emerging from the resolutions adopted in London on 30 November and 1 December 1992 by the ministers of the Member States of the European Communities with responsibility for immigration matters (which, however, were found by the *Conseil d'Etat* in a judgment adopted in plenary on 18 December 1996 to be without legal effect). The criteria were as follows: "the grounds of the application are not asylum-related (economic grounds, pure personal convenience, etc.); the application is based on deliberate fraud (the applicant makes manifestly false claims as to his nationality, makes false statements, etc.); the applicant's statements are devoid of any substance, do not contain any personal information or provide insufficient detail; the applicant refers to a general situation of unrest or insecurity, without providing evidence relating to his personal situation; his statements are fundamentally inconsistent or improbable or contain major contradictions, depriving his account of any credibility".

The applicant's case suggests that the administrative authorities assess the intrinsic value of individuals' arguments concerning their fear of persecution on the basis of the file put together in the "waiting zone".

62. The third-party intervener complained of an administrative practice it regarded as contrary to domestic case-law and which amounted to substituting the administrative authorities' assessment for the asylum application procedure, thereby depriving asylum seekers of the guarantees afforded by that procedure, particularly when it came to assessing the risk they would run if they were returned to their country. The intervener stressed that, in the absence of any appeal on the merits with suspensive effect, a large number of aliens were being removed in this way to countries where they had real reason to fear persecution.

63. The way in which this procedure (known as the "procedure for claiming asylum at the border") operates is not in principle a source of problems with regard to the Convention, in cases where the person seeking asylum does not claim to run a risk falling within the scope of Article 2 or Article 3 of the Convention in his or her country of origin. Nor would it be a source of problems if persons who made an arguable claim that they ran

such a risk had the possibility of obtaining a review of the administrative decision concerning the "manifestly unfounded" nature of their application which satisfied the requirements set out above.

64. In that connection the Court observes that the persons concerned may apply to the administrative courts to have the ministerial decision refusing them leave to enter set aside. Such an application, while it undoubtedly makes it possible to conduct "independent and rigorous" scrutiny of the decision, is without suspensive effect and is not governed by any time-limits.

65. Since the entry into force of Law no. 2000-597 of 30 June 2000, the persons concerned also have the possibility of making an "urgent application for a stay of execution" (Article L.521-1 of the Administrative Courts Code) or an "urgent application for an order to protect the applicant's interests" (also known as an "urgent application for the protection of a fundamental freedom") (Article L.521-2 of the Code) to the administrative courts. The latter procedure – of which the applicant made use without success – allows the judge, where the matter is urgent, to order "whatever measures are necessary to protect a fundamental freedom" which has been "breached in a serious and manifestly unlawful manner" by the administrative authorities. It appears particularly appropriate in cases of the kind under consideration here, as the *Conseil d'Etat* has ruled that the right to asylum is a fundamental freedom whose corollary is the right to request refugee status. This implies that aliens who request that status should, as a rule, be granted leave to remain in the country until a decision has been taken on their request. When an urgent application is made in respect of a refusal of leave to enter the country issued to an asylum seeker at the border on the ground that the asylum application is "manifestly unfounded", the judge has the power to examine that ground and may, *inter alia*, instruct the administrative authorities to grant the person concerned leave to enter (see the order of the *Conseil d'Etat* of 25 March 2003). The urgent-applications judge must give a ruling within forty-eight hours and, as a rule, following adversarial proceedings including a public hearing at which the parties are invited to appear. This allows the person concerned, in particular, to present his or her case to the judge directly. An appeal lies to the *Conseil d'Etat*, which must rule within forty-eight hours.

An individual whose asylum claim at the border has been rejected therefore has access to a procedure which, on the face of it, provides solid guarantees.

The Court notes, however, that the application to the urgent-applications judge does not have automatic suspensive effect, with the result that the individual concerned could, quite legally, be removed before the judge has given a decision. This has been the subject of criticism by, among others, the United Nations Committee against Torture (see paragraph 52 above).

66. On this point, as indicated previously, and referring in particular to the *Soering* and *Vilvarajah* judgments (cited above), the Government submitted, among other arguments, that the remedy required did not have to have automatic suspensive effect: it was sufficient for it to have suspensive effect "in practice". This, they argued, was the case with applications to the urgent-applications judge, since the authorities refrained from removing the person concerned until the judge had given a decision. The applicant replied, in particular, that no "consistent" practice existed to that effect, an assertion confirmed by ANAFE. He added, referring to the *Čonka* judgment (cited above), that in any event such a practice, which was dependent on the goodwill of one party and could be ended at any time, "was no substitute for the fundamental procedural guarantee offered by a remedy with suspensive effect".

The Court agrees with the applicant as to the conclusions to be drawn in the present case from the *Čonka* case, in which the Court examined, among other issues, the compatibility of the "extremely urgent procedure" before the Belgian *Conseil d'Etat* with Article 13 of the Convention taken in conjunction with Article 4 of Protocol No. 4. The procedure in question is similar to the urgent-application procedure before the French administrative courts which is under consideration here. In its judgment, having observed that applications under the "extremely urgent procedure" did not have automatic suspensive effect, the Court rejected the Belgian Government's argument that the remedy in question nonetheless satisfied the requirements of the Articles cited above since it had suspensive effect in practice. In that regard the Court stressed in particular that "the requirements of Article 13, and of the other provisions of the Convention, take the form of a guarantee and not of a mere statement of intent or a practical arrangement. That is one of the consequences of the rule of law, one of the fundamental principles of a democratic society, which is inherent in all the Articles of the Convention" (§ 83). It went on to find a violation on the ground that "... the [applicant] ha[d] no guarantee that the *Conseil d'Etat* and the authorities [would] comply in every case with that practice, that the *Conseil d'Etat* [would] deliver its decision, or even hear the case, before his expulsion, or that the authorities [would] allow a minimum reasonable period of grace" (ibid.).

In view of the importance which the Court attaches to Article 3 of the Convention and the irreversible nature of the damage which may result if the risk of torture or ill-treatment materialises, this finding obviously applies also to cases in which a State Party decides to remove an alien to a country where there are substantial grounds for believing that he or she faces a risk of that nature: Article 13 requires that the person concerned should have access to a remedy with automatic suspensive effect.

67. The Court therefore concludes in the instant case that, as the applicant did not have access in the "waiting zone" to a remedy with

automatic suspensive effect, he did not have an "effective remedy" in respect of his complaint under Article 3 of the Convention. There has therefore been a violation of Article 13 of the Convention taken in conjunction with Article 3.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 (f) OF THE CONVENTION

68. The applicant complained that he had been unlawfully deprived of his liberty in breach of domestic law. He relied on Article 5 § 1 (f) of the Convention, which provides:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

The applicant submitted that, under domestic law, persons could be held in the waiting zone for a maximum period of twenty days. However, he had arrived at Paris Charles de Gaulle airport on 29 June 2005 and had been held until 20 July 2005, in other words, for twenty-two days. He had in fact been held in the international zone for the first two days after his arrival, as the airport and border police had repeatedly refused to register his request for leave to enter as an asylum seeker and to allow him access to the "waiting zone" (see paragraph 10 above). Unfortunately, it was not uncommon for aliens to find themselves in this position at border points.

The applicant further submitted that, although Article L.221-1 of the Immigration and Asylum Code provided for an individual to be held in the waiting zone only "for the time strictly necessary to arrange his departure and, if he is an asylum seeker, to investigate whether his application is manifestly unfounded", he had been held there after the administrative authorities had rejected his request for leave to enter on those grounds (on 6 July 2005). By 7 July 2005 it had become clear that his removal to Eritrea or any other country (an option which, moreover, had not been considered by the authorities) would not be physically possible since he had no travel papers (the Eritrean embassy having refused on that day to recognise him and issue him with a laissez-passer) and it was not known where he had come from. Even more seriously, he had been held in the waiting zone after 15 July 2005, the date of the interim measure indicated to the Government by the Court under Rule 39 of the Rules of Court, despite the fact that, in

the light of the *Mamatkulov and Askarov v. Turkey* judgment ([GC], nos. 46827/99 and 46951/99, ECHR 2005-I), that measure acted as a bar to his removal to Eritrea.

69. The Government disputed the assertion that the applicant had arrived in Roissy airport on 29 June 2005 (see paragraph 10 above) and had remained in the international zone for two days. They added that, in any event, his “deprivation of liberty” within the meaning of Article 5 § 1 had begun only on 1 July 2005, the date on which he had made himself known to the airport and border police. The Government took the view that the applicant had in reality failed to report to the authorities in the international zone between 29 June and 1 July and had therefore remained there of his own free will for the two days in question; there could be no “deprivation of liberty” in the absence of any compulsion on the part of the authorities.

The duration of the applicant's deprivation of liberty had therefore not exceeded the statutory maximum of twenty days. Moreover, it had been the result of decisions taken under the supervision of the judicial authority: the initial decision had been taken by the administrative authorities on 1 July 2005 and extended, in accordance with the law, on 3 July. It had been further extended on 5 and 13 July by the liberties and detention judge of the Bobigny *tribunal de grande instance* after evidence had been heard from the applicant.

With particular reference to the holding of the applicant in the waiting zone after 15 July 2005, the Government submitted that doubts had remained as to his identity, perpetuated by the refusal of the Eritrean ambassador to recognise him as a national of that country, and that the authorities had been obliged to carry out checks in that regard before granting him leave to enter France. That was why the applicant had continued to be held in the waiting zone between 15 and 20 July 2005. In the Government's view, this situation did not give rise to any difficulties with regard to the case-law established by *Mamatkulov and Askarov*, cited above, since measures under Rule 39 “[were] aimed solely at staying execution of the 'refoulement' or removal measure pending a decision by the Court, in order to prevent irreversible damage to the victim of the alleged violation and prevent the integrity and effectiveness of the final judgment being undermined[;] they [were] not designed, at that stage in the proceedings, to question the validity of the decision to refuse entry or remove the person concerned, or of the resulting temporary deprivation of liberty[;] the effects of these decisions [were] merely “frozen” temporarily pending the Court's decision, meaning that the actual removal of the applicant [could] not take place for the time being”.

70. The Court observes first of all that the applicant did not produce any prima facie evidence to support his assertion that he arrived in Paris Charles de Gaulle airport on 29 June 2005. It further notes that the Government, who contested this version of events, stated that they had checked the

passenger lists for flights arriving in Roissy airport from South Africa on 29 and 30 June and 1 July 2005 and that there had been no trace of a passenger by the name of Gebremedhin, Gaberamadhien or Eider (the name which, according to the applicant, was on the passport he had borrowed – see paragraph 10 above).

The Court therefore comes to the same conclusion as the Government on this point, namely that the information in the case file provides no indication that the applicant arrived in the airport before 1 July 2005 and that the only reliable document is the report drawn up by the airport and border police on 1 July stating that the applicant was questioned at 11 a.m. that day.

In the circumstances, the "deprivation of liberty" to which the applicant was subjected should be considered to have begun on the date on which he was placed in the "waiting zone", namely 1 July 2005. Given that it is established that it ended on 20 July 2005, the date on which the applicant was granted leave to enter France (see paragraph 17 above), it cannot be said to have exceeded the maximum period of twenty days laid down in domestic law.

71. The Court further notes that the applicant did not contend that his placement in the waiting zone on 1 July in itself breached Article 5 § 1 of the Convention. As it observed in its admissibility decision of 10 October 2006 (§ 58), he complained only that he had been held in the waiting zone for a period of time subsequent to the decision of 6 July 2005 refusing him leave to enter the country.

72. As regards the details of the applicant's visit to the Eritrean embassy on 7 July 2005, the Court notes that there is no evidence in the case file to support the applicant's assertion, which was denied by the Government, that the ambassador had on that occasion refused once and for all to issue him with a laissez-passer (see paragraph 16 above). No conclusions can therefore be drawn from this allegation as regards Article 5 § 1 of the Convention.

73. However, account must be taken of the fact that on 15 July 2005 the President of the Chamber to which the case was initially assigned decided to indicate to the Government, under Rule 39 of the Rules of Court, that it was desirable in the interests of the parties and of the proper conduct of the proceedings before the Court not to remove the applicant to Eritrea before midnight on 30 August 2005.

The Court reiterates in that regard that the Contracting States are obliged under Article 34 of the Convention to comply with the interim measures indicated under Article 39 (see *Mamatkulov and Askarov*, cited above, §§ 99-129). Hence, in the instant case, the Government could not have removed the applicant to Eritrea from 15 July 2005 onwards without being in breach of their obligations under the Convention. It is true that the measures indicated under Rule 39 are only temporary in nature. However, the measure indicated in the instant case by the President of the Chamber to

which the case was initially assigned was valid until 30 August 2005, that is to say, beyond 20 July 2005 (the date on which the applicant left the waiting zone). Furthermore, the Government did not request that the measure be lifted between 15 and 20 July.

74. The implementation of an interim measure following an indication by the Court to a State Party that it would be desirable not to return an individual to a particular country does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subject complies with Article 5 § 1 of the Convention.

More specifically, as the application of Rule 39 does not prevent the person concerned from being sent to a different country – provided it has been established that the authorities of that country will not send him or her on to the country referred to by the Court – his or her detention for that purpose may amount to the "lawful" detention of a person "against whom action is being taken with a view to deportation or extradition" within the meaning of Article 5 § 1(f) of the Convention.

Furthermore, where, after Rule 39 has been applied, the authorities in the State Party concerned have no option but to end the deprivation of the person's liberty with a view to his "deportation", and this implies granting him leave to enter the country, keeping him in detention for the time strictly necessary for the authorities to check whether his entry into the country is lawful may amount to the "lawful detention of a person to prevent his effecting an unauthorised entry into the country" within the meaning of Article 5 § 1(f). It cannot be ruled out, moreover, that in the course of such subsequent checks the authorities may uncover information – relating, for instance, to the identity of the person concerned – which might justify the Court's lifting the interim measure it indicated under Rule 39. Nevertheless, detention of this kind, like any deprivation of liberty, must be "lawful" and "in accordance with a procedure prescribed by law" within the meaning of Article 5 § 1. Not only must it have a strictly defined statutory basis, in particular as regard its duration – which must not be unreasonable – but it must also be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness (see, for example, *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III).

75. In the instant case the Court notes that the decision of 6 July 2005 refusing the applicant leave to enter the country did not stipulate that he was to be removed exclusively to Eritrea, but "if need be, to any country where he may gain lawful entry" (see paragraph 13 above). The holding of the applicant in the waiting zone between 15 and 20 July 2005 with a view to his removal to a country other than Eritrea which might have admitted him could amount to a deprivation of liberty with a view to his "departure", in accordance with Article L.221-1 of the Immigration and Asylum Code (see the admissibility decision of 10 October 2006, § 55) and within the context

of "deportation" proceedings for the purpose of Article 5 § 1 (f) of the Convention.

The Government did not, however, contend that this was the object of the deprivation of liberty to which the applicant was subjected after 15 July 2005. Stressing that it had a legal basis in the orders of the liberties and detention judge, they pointed out that, in order to comply with the measure indicated by the Court under Rule 39, the authorities "had to ... take steps to grant Mr Gebremedhin leave to enter the country and remain there at complete liberty". However, as doubts persisted concerning the applicant's identity, they had been obliged to carry out checks in order to minimise the risk that he might become untraceable once he had been granted leave to enter and might remain in the country illegally. In the Government's submission, the authorities had acted in accordance with the sovereign right of States Parties to control the entry, residence and expulsion of aliens conferred on them by the Court's case-law.

The Court is satisfied by these explanations, noting that the domestic authorities acted in strict compliance with the legal procedures. Firstly, in accordance with domestic law (Articles L.221-3, L.222-1 and L.222-2 of the Immigration and Asylum Code (see paragraph 29 above)), the initial decision to place the applicant in the waiting zone on 1 July 2005 was extended after forty-eight hours by the competent administrative authorities for the same period, and subsequently by the liberties and detention judge of the Bobigny *tribunal de grande instance*, first on 5 July 2005 for eight days and a second time on 13 July 2005 for a further eight days (see paragraph 18 above). Secondly, on the twentieth day after he had been placed in the waiting zone, the applicant was granted leave to enter France and was issued with a safe conduct (see paragraph 17 above), putting an end to his deprivation of liberty. Hence, not only did the overall period of detention not exceed the legal maximum of twenty days, but the holding of the applicant in the waiting zone between 15 and 20 July 2005 was also based on a court decision in the form of the order by the liberties and detention judge of 13 July 2005. Moreover, since the applicant by his own admission had no travel papers, the Court sees no reason to doubt the Government's good faith in stating that the authorities had to conduct checks as to his identity before granting him leave to enter the country. Lastly, the Court considers that the length of time for which the applicant was held in the waiting zone for that purpose did not exceed what was reasonable in the circumstances of the case.

There are therefore no grounds for considering that, between 15 and 20 July 2005, the applicant was arbitrarily deprived of his liberty.

In conclusion, the Court accepts that the holding of the applicant in the waiting zone after 15 July 2005 amounted to "lawful detention of a person to prevent his effecting an unauthorised entry into the country" within the

meaning of Article 5 § 1 (f) of the Convention. Accordingly, there has been no violation of that provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

77. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

78. The Government considered this claim excessive. They proposed a payment of EUR 3,000 to the applicant for the damage sustained on account of his being held in the waiting zone, should the Court find a violation.

79. The Court points out that it found a violation only of Articles 13 and 3 of the Convention taken together on the ground that since the applicant, while in the "waiting zone", did not have available to him a remedy with automatic suspensive effect, he did not have an "effective remedy" in respect of his complaint under Article 3 of the Convention. While such circumstances are indisputably liable to cause anxiety and tension, the Court considers that its finding of a violation constitutes adequate redress, in the circumstances of the case, for the non-pecuniary damage which the applicant can claim to have sustained.

B. Costs and expenses

80. The applicant received legal aid for the proceedings before the Court. His lawyer stated that, as his client had no funds, he had "advanced the costs and fees" on his behalf. He claimed EUR 18,657.60 for fees and submitted a pro forma invoice dated 6 December 2006 stating that the sum in question corresponded to 120 hours' work at an hourly rate of EUR 130 excluding tax. He claimed a further EUR 800 for costs (copies, telephone, postage and so forth).

81. The Government considered these claims to be excessive. Pointing out that costs and expenses incurred by applicants before the Court were eligible for reimbursement only if the relevant vouchers were produced and the Court found it established that they had been actually and necessarily incurred and were reasonable, they proposed a sum of EUR 3,500.

82. The Court reiterates that, as a rule, applicants' costs and expenses may be reimbursed only if they have been actually and necessarily incurred and are reasonable as to quantum. In addition, under Rule 60 §§ 2 and 3 of the Rules of Court, the applicant must submit itemised particulars of all claims, together with any relevant supporting documents, failing which the Chamber may reject the claim in whole or in part (see, among other authorities, *Mazelié v. France*, no. 5356/04, § 38, 23 October 2006).

Given that the applicant was first an asylum seeker and then a refugee, the Court does not doubt that he was short of funds. It considers that, in the circumstances, the applicant should be awarded an amount in respect of the advance paid on his behalf by his lawyer. In that connection it finds the pro forma invoice produced by the lawyer to be satisfactory.

However, it must be borne in mind that the Court has found a violation of the Convention in the instant case in respect of only one of the applicant's complaints, namely his complaint under Articles 13 and 3 taken together. Only those costs and expenses which are reasonable as to quantum and which have been actually and necessarily incurred in order to seek through the domestic legal system redress of the aforesaid violation and to have the same established by the Convention institutions are recoverable under Article 41. Accordingly, the Court dismisses the remainder of the claim (see, for example, *I.J.L. and Others v. the United Kingdom*, nos. 29522/95, 30056/96 and 30574/96, § 151, ECHR 2000-IX).).

Having said that, and taking into account the diligence of the applicant's counsel, the Court deems it reasonable to award EUR 10,000 for costs and expenses, less the EUR 1,699.40 already paid by the Council of Europe in legal aid, giving a sum of EUR 8,300.60.

C. Default interest

83. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1. *Holds* that there has been a violation of Article 13 of the Convention taken in conjunction with Article 3;

2. *Holds* that there has been no violation of Article 5 § 1 (f) of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,300.60 (eight thousand three hundred euros and sixty cents) in respect of costs and expenses, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 26 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally DOLLÉ
Registrar

András BAKA
President